

1 **HAINES LAW GROUP, APC**
2 Paul K. Haines (SBN 248226)
3 phaines@haineslawgroup.com
4 Sean M. Blakely (SBN 264384)
5 sblakely@haineslawgroup.com
6 Jamin Xu (SBN 320991)
jxu@haineslawgroup.com
222 N. Sepulveda Blvd., Suite 1550
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

7 Attorneys for Plaintiff

8
9 **UNITED STATES DISTRICT COURT**
10
11 **CENTRAL DISTRICT OF CALIFORNIA**

12 JUAN L. DAVILA as an individual and
on behalf of all others similarly situated,

13 Plaintiff,

14 vs.

15 OMNIMAX INTERNATIONAL,
16 U.S.A., INC., a California Corporation;
EURAMAX INTERNATIONAL, INC.,
17 a Delaware Corporation; and DOES 1
through 100,

18 Defendants.

19 CASE NO. 5:18-CV-02069-AB-SP
20
FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:

- 21
22
23
24
25
26
27
- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 510, 558, 1194, 1198);**
 - (2) **MINIMUM WAGE
VIOLATIONS (LABOR CODE
§§ 1182.12, 1194, 1194.2, 1197);**
 - (3) **UNLAWFUL DEDUCTIONS
FROM WAGES (LABOR
CODE §§ 221-223);**
 - (4) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512,
558);**
 - (5) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516,
558);**
 - (6) **WAGE STATEMENT
VIOLATIONS (LABOR CODE
§ 226 *et seq.*);**
 - (7) **UNFAIR COMPETITION (BUS
& PROF CODE § 17200 *et seq.*);**
and

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

**(8) CIVIL PENALTIES UNDER
THE PRIVATE ATTORNEYS
GENERAL ACT (LABOR
CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Juan Davila (hereinafter “Plaintiff”) on behalf of himself and all
2 others similarly situated, hereby brings this First Amended Class and
3 Representative Action Complaint (“Complaint”) against Defendants Omnimax
4 International, Inc. (“Omnimax”), a California Corporation; Euramax International,
5 Inc., a Delaware Corporation (“Euramax”); and DOES 1 to 100, inclusive
6 (collectively “Defendants”), and on information and belief alleges as follows:

7 **JURISDICTION**

8 1. Plaintiff, on behalf of himself and all others similarly situated, hereby
9 brings this Complaint for recovery of unpaid wages and penalties under California
10 Business and Professions Code § 17200 *et. seq.*, Labor Code §§ 221-223, 226 *et*
11 *seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, and Industrial
12 Welfare Commission Wage Order 1 (“Wage Order 1”), in addition to seeking
13 declaratory relief and restitution.

14 2. This Complaint is brought pursuant to Rule 23 of the Federal Rules of
15 Civil Procedure. The monetary damages and restitution sought by Plaintiff exceed
16 the minimal jurisdictional limits of this Court and will be established according to
17 proof at trial.

18 3. This Court has jurisdiction over Defendants violations under the Class
19 Action Fairness Act, 28 U.S.C. § 1332(d), 1446, and 1453.

20 **VENUE**

21 4. Venue is proper under 28 U.S.C. § 1391 because Defendants do
22 business within the Central District of California. Defendants are also subject to
23 the personal jurisdiction of this Court pursuant to 28 U.S.C. § 1391(c), because at
24 least some of them operate businesses within the Central District of California.

25 **PARTIES**

26 5. Plaintiff is an individual over the age of eighteen (18). At all relevant times
27 herein, Plaintiff was and currently is, a California resident. During the four years

1 immediately preceding the filing of the Complaint in this action and within the
2 statute of limitations periods applicable to each cause of action pled herein, Plaintiff
3 was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a
4 victim of Defendants' policies and/or practices complained of herein, lost money
5 and/or property, and has been deprived of the rights guaranteed by Labor Code §§
6 221-223, 226 *et seq.*, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, and
7 1198, California Business and Professions Code § 17200 *et seq.* ("Unfair
8 Competition Law"), and Wage Order 1, which sets employment standards for the
9 manufacturing industry.

10 6. Plaintiff is informed and believes, and based thereon alleges, that
11 during the four years preceding the filing of the Complaint and continuing to the
12 present, Defendants did (and continue to do) business manufacturing building and
13 transportation products, and employed Plaintiff and other, similarly-situated non-
14 exempt employees within Riverside County and the state of California and,
15 therefore, were (and are) doing business in Riverside County and the State of
16 California.

17 7. Plaintiff does not know the true names or capacities, whether
18 individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100,
19 inclusive, and for that reason, said defendants are sued under such fictitious names,
20 and Plaintiff will seek leave from this Court to amend this Complaint when such
21 true names and capacities are discovered. Plaintiff is informed, and believes, and
22 based thereon alleges, that each of said fictitious defendants, whether individual,
23 partners, or corporate, were responsible in some manner for the acts and omissions
24 alleged herein, and proximately caused Plaintiff and the Classes (as defined in
25 Paragraph 20) to be subject to the unlawful employment practices, wrongs, injuries
26 and damages complained of herein.

27 8. Plaintiff is informed, and believes, and thereon alleges, that at all times

1 mentioned herein, Defendants were and are the employers of Plaintiff and all
2 members of the Classes.

3 9. At all times herein mentioned, each of said Defendants participated in
4 the doing of the acts hereinafter alleged to have been done by the named
5 Defendants; and furthermore, the Defendants, and each of them, were the agents,
6 servants, and employees of each and every one of the other Defendants, as well as
7 the agents of all Defendants, and at all times herein mentioned were acting within
8 the course and scope of said agency and employment. Defendants, and each of
9 them, approved of, condoned, and/or otherwise ratified each and every one of the
10 acts or omissions complained of herein.

11 10. At all times mentioned herein, Defendants, and each of them, were
12 members of and engaged in a joint venture, partnership, and common enterprise,
13 and acting within the course and scope of and in pursuance of said joint venture,
14 partnership, and common enterprise. Further, Plaintiff alleges that all Defendants
15 were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

17 11. Plaintiff is employed by Defendants as a non-exempt employee as a
18 “Machine Operator.” Plaintiff was hired in 2004 and has been on disability leave
19 since February 27, 2018.

20 12. During Plaintiff’s employment with Defendants, Plaintiff was
21 scheduled to work Monday through Friday, from approximately 5:00 a.m. to 1:30
22 p.m., although Plaintiff often worked outside of these hours.

23 13. Plaintiff was not provided all legally required meal periods due to
24 Defendants’ meal period policies/practices which fail to provide a legally compliant
25 meal period of at least 30-minutes commencing before the conclusion of the fifth
26 hour of work. Nor do Defendants’ meal period policies/practices provide for a
27 second meal period for shifts over 10.0 hours. Specifically, upon information and

1 belief, Defendants' daily practice was to ring a bell signaling the start of Plaintiff
2 and other non-exempt employees' meal period at 10:00 a.m. Plaintiff and other non-
3 exempt employees were not allowed to leave their work stations until 10:00 a.m.
4 when the bell rang, and were required to begin walking back to their assigned work
5 stations when the bell signaling the end of the meal period rang at approximately
6 10:27 a.m., as they were required to be back at their work stations by 10:30 a.m. As
7 a result of Defendants' meal period policies/practices, Plaintiff and other non-
8 exempt employees' meal periods were often "short," as they were often not
9 provided full 30-minute meal periods. Furthermore, Plaintiff and other non-exempt
10 employees routinely clocked in and began performing work before 5:00 a.m., but
11 were not provided a timely first meal period commencing before the end of the fifth
12 hour of work given that the meal period did not commence until 10:00 a.m. Unless
13 Plaintiff was leaving the Defendants' facilities for work, Plaintiff did not clock out
14 for lunch and Defendants automatically deducted 30 minutes from Plaintiff's hours
15 worked. This deduction was automatic and did not depend on whether Plaintiff
16 received a full 30-minute meal period. Further, when Plaintiff worked shifts over
17 10.0 hours, he was not provided a second 30-minute meal period due to Defendants'
18 meal period policies/practices. On those occasions when Plaintiff was not provided
19 with all legally-compliant meal periods to which he was entitled, Defendants failed
20 to compensate Plaintiff with the required meal period premium for each workday
21 in which he experienced a meal period violation as mandated by Labor Code §
22 226.7. Further, upon information and belief during at least a portion of the class
23 period, Defendants maintained no payroll code or other mechanism for the payment
24 of meal period premium payments under Labor Code § 226.7 in the event that a
25 legally compliant meal period was not provided to their non-exempt employees.

26 14. Plaintiff and other non-exempt employees were not authorized and
27 permitted to take all legally compliant rest periods. Defendants had a bell schedule

1 that would ring at approximately 8:00 a.m. to signal the beginning of a rest period,
2 and again at approximately 12:30 p.m. to signal the beginning of the second rest
3 period. However, there was no bell to signal the end of the rest period, and
4 employees were expected to return to their work station prior to the conclusion of a
5 “net” ten minutes of rest. Moreover, upon information and belief, there was no bell
6 to signal the beginning of a third rest period when employees worked shifts in
7 excess of 10.0 hours, and Plaintiff and other non-exempt employees were routinely
8 not authorized and permitted to take a third rest period for shifts in excess of 10.0
9 hours. On those occasions when Plaintiff was not authorized and permitted to take
10 all legally-compliant rest periods to which he was entitled, Defendants failed to
11 compensate Plaintiff with the required rest period premium for each workday in
12 which he experienced a rest period violation as mandated by Labor Code § 226.7.
13 Further, upon information and belief during at least a portion of the class period,
14 Defendants maintained no payroll code or other mechanism for the payment of rest
15 period premium payments under Labor Code § 226.7 in the event that a legally
16 compliant rest period was not provided to their non-exempt employees.

17 15. Plaintiff was not authorized and permitted to take all required meal and
18 rest periods due to Defendants’ meal and rest period policies/practices, which upon
19 information and belief, failed to authorize and permit employees to be completely
20 relieved of employer control during meal and rest periods. Specifically, Defendants’
21 meal and rest period policies/practices required Plaintiff and non-exempt
22 employees to remain on Defendants’ premises during meal and rest periods, unless
23 they were expressly granted permission to leave the premises during these off-duty
24 non-working periods. In particular, Defendants’ Hourly Employee Manual
25 explicitly states that employees must remain on premises for all rest periods.
26 Further, Defendants have, on at least two separate occasions, verbally informed
27 Plaintiff and/or other non-exempt employees that they are required to receive

1 Defendants' permission to leave the premises during meal and/or rest periods. As a
2 result, Defendants' meal and rest period policies/practices are in violation of
3 *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260 (2016) ("[D]uring
4 required rest periods, employers must relieve their employees of all duties and
5 relinquish any control over how employees spend their break time.").

6 16. During Plaintiff's employment, Plaintiff and other non-exempt
7 employees were required to clock in and out for periods of work, and although
8 Defendants recorded Plaintiff's hours worked to the minute, Defendants only paid
9 Plaintiff in quarter of an hour increments. Defendants' rounding of time to the
10 quarter of an hour was not even-handed, and has resulted in Plaintiff and putative
11 class members not being compensated for all hours worked.

12 17. During Plaintiff's employment with Defendants, Plaintiff routinely
13 worked in excess of 8 hours per workday and/or more than 40 hours per workweek
14 but did not receive overtime compensation equal to one and one-half times his
15 regular rate of pay for working overtime hours. Specifically, Defendants paid
16 Plaintiff non-discretionary bonuses and paid other forms of non-discretionary pay
17 that are not excludable from the regular rate of pay (hereinafter the aforementioned
18 forms of pay are collectively referred to as "Incentive Pay"). Defendants failed to
19 accurately calculate Plaintiff's regular rate of pay as a result of receiving Incentive
20 Pay, as Plaintiff was only paid one-and-a-half times his base rate of pay, thereby
21 causing Plaintiff to be underpaid all his required overtime wages

22 18. During at least a portion of the class period, Defendants made unlawful
23 deductions from Plaintiff's pay. Defendants were not required or empowered by
24 state or federal law to withhold amounts from Plaintiff's pay, nor were Defendants
25 expressly authorized to do so in writing by Plaintiff to recover insurance premiums,
26 benefit plan contributions or other deductions not amounting to a rebate on the
27 employee's wages or a collective bargaining agreement. Further, upon information

1 and belief during at least a portion of the class period, Defendants were not
2 permitted to deduct Plaintiff's pay under Labor Code Sections §§ 221 and 224 but
3 nonetheless, Defendants deducted a "Tobacco Premium" and a "Misc Deduction"
4 from Plaintiff's pay.

5 19. As a result of Defendants' failure to pay meal and rest period premium
6 wages, and unlawful deductions from wages, Defendants maintained inaccurate
7 payroll records and issued inaccurate wage statements to Plaintiff. Additionally,
8 the wage statements issued to Plaintiff and non-exempt employees failed to list the
9 correct entity and address of the legal entity that is the employer.

CLASS ACTION ALLEGATIONS

11 **20. Class Definitions:** Plaintiff brings this action on behalf of himself and
12 the following Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure:

- a. The Overtime Class consists of all Defendants' current and former non-exempt employees in California who: (i) had their timekeeping hours rounded; and/or (ii) worked more than eight hours per day and/or forty hours per week and received Incentive Pay during a corresponding time period, and/or (iii) had 30 minutes of time automatically deducted from their timekeeping records for a purported meal period, during the four years immediately preceding the filing of the Complaint through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) had their timekeeping entries rounded, and/or (ii) had 30 minutes of time automatically deducted from their timekeeping records for a purported meal period, during the four years immediately preceding the filing of the Complaint through the present.

c. The Meal Period Class consists of all Defendants' current and former

1 non-exempt employees in California who: (i) worked at least one shift
2 in excess of 5.0 hours, and/or (iii) worked at least one shift in excess
3 of 10.0 hours, during the four years immediately preceding the filing
4 of the Complaint through the present.

- 5 d. The Rest Period Class consists of all Defendants' current and former
6 non-exempt employees in California who worked at least one shift in
7 excess of 3.5 hours, during the four years immediately preceding the
8 filing of the Complaint through the present.
- 9 e. The Unlawful Deductions Class consists of all Defendants' current and
10 former non-exempt employees in California who: (i) were subjected to
11 Defendants' policies/practices of deducting a "Tobacco Premium"
12 from its non-exempt employees' timekeeping/payroll records; and/or
13 (ii) were subjected to Defendants' policies/practices of deducting a
14 "Misc Deduction" from its non-exempt employees'
15 timekeeping/payroll records, at any time during the four years
16 immediately preceding the filing of the Complaint through the present.
- 17 f. The Wage Statement Class consists of all members of the Overtime
18 Class, Minimum Wage Class, Meal Period Class and/or Rest Period
19 Class who received a wage statement, during the one year immediately
20 preceding the filing of the Complaint through the present.

21 21. **Numerosity/Ascertainability:** The members of the Classes are so
22 numerous that joinder of all members would be unfeasible and not practicable. The
23 membership of the Classes and Subclasses are unknown to Plaintiff at this time;
24 however, it is estimated that the members of the Classes number greater than fifty
25 (50) individuals. The identity of such membership is readily ascertainable via
26 inspection of Defendants' employment records.

27 22. **Common Questions of Law and Fact Predominate/Well Defined**

1 **Community of Interest:** There are common questions of law and fact as to Plaintiff
2 and all other similarly situated employees, which predominate over questions
3 affecting only individual members including, without limitation to:

- 4 i. Whether Defendants violated the applicable Labor Code provisions,
5 including, but not limited to §§ 510 and 1194, by requiring overtime
6 work and not paying for said work according to the overtime laws of
7 the State of California;
- 8 ii. Whether Defendants provided all legally compliant meal periods to
9 members of the Meal Period Class pursuant to Labor Code §§ 226.7
10 and 512;
- 11 iii. Whether Defendants authorized and permitted all legally compliant rest
12 periods to members of the Rest Period Class;
- 13 iv. Whether Defendants provided meal or rest period premium payments
14 for non-compliant meal and/or rest periods;
- 15 v. Whether Defendants' practice of making deductions to wages of
16 members of the Unlawful Deductions Class based on a "Tobacco
17 Premium" and/or a "Misc. Deduction" constitute unlawful deductions
18 under California law;
- 19 vi. Whether Defendants furnished legally compliant wage statements to
20 members of the Wage Statement Class pursuant to Labor Code § 226;
21 and

22 23. **Predominance of Common Questions:** Common questions of law
23 and fact predominate over questions that affect only individual members of the
24 Classes. The common questions of law set forth above are numerous and substantial
25 and stem from Defendants' policies and/or practices applicable to each individual
26 class member, such as Defendants' uniform meal and rest period policies/practices.
27 As such, the common questions predominate over individual questions concerning

1 each individual class member's showing as to their eligibility for recovery or as to
2 the amount of their damages.

3 **24. Typicality:** The claims of Plaintiff are typical of the claims of the
4 Classes because Plaintiff was employed by Defendants as a non-exempt employee
5 in California during the statute(s) of limitations period applicable to each cause of
6 action pled in the Complaint. As alleged herein, Plaintiff, like the members of the
7 Classes, was not provided all required meal periods, was not authorized and
8 permitted to take all required rest periods, and did not receive meal and rest period
9 premium wages for missed or non-compliant meal and rest periods.

10 **25. Adequacy of Representation:** Plaintiff is fully prepared to take all
11 necessary steps to represent fairly and adequately the interests of the members of the
12 Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and
13 adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys
14 have prosecuted and defended numerous wage-and-hour class actions in state and
15 federal courts in the past and are committed to vigorously prosecuting this action
16 on behalf of the members of the Classes.

17 **26. Superiority:** The California Labor Code is broadly remedial in nature
18 and serves an important public interest in establishing minimum working conditions
19 and standards in California. These laws and labor standards protect the average
20 working employee from exploitation by employers who have the responsibility to
21 follow the laws and who may seek to take advantage of superior economic and
22 bargaining power in setting onerous terms and conditions of employment. The
23 nature of this action and the format of laws available to Plaintiff and members of
24 the Classes make the class action format a particularly efficient and appropriate
25 procedure to redress the violations alleged herein. If each employee were required
26 to file an individual lawsuit, Defendants would necessarily gain an unconscionable
27 advantage since they would be able to exploit and overwhelm the limited resources

of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would substantially impair or impede the ability of the class members to protect their interests. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Classes identified in Paragraph 20 are maintainable as a Class under Rule 23 of the Federal Rules of Civil Procedure.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

(AGAINST ALL DEFENDANTS)

27. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

28. This cause of action is brought pursuant to Labor Code §§ 510, 1194,
198, which provide that non-exempt employees are entitled to all overtime
and compensation for all overtime hours worked and provide a private right
of action for the failure to pay all overtime compensation for overtime work
performed.

1 29. At all times relevant herein, Defendants were required to properly
2 compensate non-exempt employees, including Plaintiff and members of the
3 Overtime Class, for all overtime hours worked pursuant to California Labor Code §
4 1194 and Wage Order 1. Wage Order 1, § 3 requires an employer to pay an
5 employee “one and one-half (1½) times the employee’s regular rate of pay” for work
6 in excess of 8 hours per work day and/or in excess of 40 hours of work in the
7 workweek. Wage Order 1, § 3 also requires an employer to pay an employee double
8 the employee’s regular rate of pay for work in excess of twelve hours each work day
9 and/or for work in excess of eight hours on the seventh consecutive day of work in
10 the workweek. Defendants caused Plaintiff to work overtime and hours, but did not
11 credit Plaintiff or members of the Overtime Pay Class with all overtime hours
12 actually worked, and did not compensate Plaintiff or members of the Overtime Pay
13 Class at one and one-half times their regular rate of pay for such hours.

14 30. The foregoing policies and practices are unlawful and create
15 entitlement to recovery by Plaintiff and the Overtime Class Members in a civil action
16 for the unpaid amount of overtime premiums owing, including interest thereon,
17 statutory penalties, attorneys' fees, and costs of suit according to California Labor
18 Code §§ 210, 216, 510, 1194, and 1198; and Code of Civil Procedure § 1021.5

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS (AGAINST ALL DEFENDANTS)

22 31. Plaintiff re-alleges and incorporates by reference all previous
23 paragraphs.

24 32. Wage Order No. 1, § 4 and California Labor Code §§ 1197 and 1182.12 establish
25 the right of employees to be paid minimum wages for all hours worked, in amounts
26 set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee
27 who has not been paid the legal minimum wage as required by Labor Code § 1197

1 may recover the unpaid balance together with attorneys' fees and costs of suit, as
2 well as liquidated damages in an amount equal to the unpaid wages and interest
3 accrued thereon. At all relevant times herein, Defendants failed to conform their pay
4 practices to the requirements of the law by failing to pay Plaintiff and the Minimum
5 Wage Class for all hours actually worked including, but not limited to, all hours they
6 were subject to the control of Defendants and/or suffered or permitted to work under
7 the California Labor Code and Wage Order 1.

8 33. California Labor Code § 1198 makes unlawful the employment of an
9 employee under conditions that the IWC prohibits. California Labor Code §§
10 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees
11 the legal minimum wage is liable to pay those employees the unpaid balance of the
12 unpaid wages as well as liquidated damages in an amount equal to the wages due
13 and interest thereon.

14 34. As a direct and proximate result of Defendants' unlawful conduct as
15 alleged herein, Plaintiff and the Minimum Wage Class have sustained economic
16 damages, including but not limited to unpaid wages and lost interest, in an amount
17 to be established at trial, and they are entitled to recover economic and statutory
18 damages and penalties and other appropriate relief as a result of Defendants'
19 violations of the California Labor Code and Wage Order 1.

20 35. Defendants' practice and uniform administration of corporate policy
21 regarding illegal employee compensation is unlawful and creates an entitlement to
22 recovery by Plaintiff and members of the Minimum Wage Class in a civil action for
23 the unpaid amount of minimum wages, liquidated damages, including interest
24 thereon, statutory penalties, attorney's fees, and costs of suit according to California
25 Labor Code §§ 558, 1194 et seq., 1197, 1198, and Code of Civil Procedure § 1021.5.
26 ///
27 ///

THIRD CAUSE OF ACTION
UNLAWFUL DEDUCTION FROM WAGES
(AGAINST ALL DEFENDANTS)

36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

37. As alleged above, on an occasion when Defendant deducted Plaintiff's pay for a "Tobacco Premium" and/or a "Misc. Deduction," Defendants compensated Plaintiff at a lower rate of pay than Plaintiff's regular rate of pay, and as a result of automatically deducting an hour of pay from Plaintiff's wages when she did not clock-out for a meal period. Defendants failed to pay all wages owed to Plaintiff and members of the Unlawful Deductions Class in violation of Labor Code §§221-223., which prohibit, among other things, deductions from wages except in certain enumerated circumstances not applicable here.

38. Defendants' failure to pay all earned wages is unlawful and creates an entitlement to recovery by Plaintiff and the members of the Unlawful Deductions Class for unpaid wages, interest on said wages, and attorneys' fees pursuant to Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

FOURTH CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(AGAINST ALL DEFENDANTS)

39. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

40. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the California Labor Code and Wage Order 1, § 11. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the

1 Meal Period Class at their respective regular rates of pay, in accordance with
2 California Labor Code §§ 210, 226.7, and 512.

3 41. As a result, Defendants are responsible for paying premium
4 compensation for meal period violations pursuant to Labor Code §§ 226.7, 512, and
5 558, and Wage Order 1, including interest thereon, statutory penalties, civil
6 penalties, and costs of suit.

FIFTH CAUSE OF ACTION

REST PERIOD VIOLATIONS

(AGAINST ALL DEFENDANTS)

10 42. Plaintiff re-alleges and incorporates by reference all previous
11 paragraphs.

12 43. Wage Order 1, § 12 and Labor Code §§ 226.7 and 516 establish the
13 right of employees to be provided with a rest period of at least ten (10) minutes for
14 each four (4) hour period worked, or major fraction thereof.

15 44. As alleged herein, Defendants failed to authorize and permit Plaintiff
16 and members of the Rest Period Class to take all required rest periods.

17 45. The foregoing violations create an entitlement to recovery by Plaintiff
18 and members of the Rest Period Class in a civil action for the unpaid amount of rest
19 period premiums owing, including interest thereon, statutory penalties, civil
20 penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558, and Civil
21 Code §§ 3287(b) and 3289.

SIXTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

25 46. Plaintiff re-alleges and incorporates by reference all previous
26 paragraphs.

27 ||| 47. Plaintiff is informed and believes, and based thereon alleges, that

1 Defendants knowingly and intentionally, as a matter of uniform policy and practice,
2 failed to furnish Plaintiff and members of the Wage Statement Class with complete
3 and accurate wage statements with respect to their actual regular hours worked, total
4 gross wages earned, all rates of pay, and total net wages earned, in violation of
5 Labor Code § 226 *et seq.*

6 48. Defendants' failures in furnishing Plaintiff and members of the Wage
7 Statement Class with complete and accurate itemized wage statements resulted in
8 actual injury, as said failures led to, among other things, the non-payment of all
9 meal and rest period premium wages, the unlawful deduction of pay, and deprived
10 them of the information necessary to identify the discrepancies in Defendants'
11 reported data.

12 49. Defendants' failures create an entitlement to recovery by Plaintiff and
13 members of the Wage Statement Class in a civil action for all damages and/or
14 penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil
15 penalties, reasonable attorneys' fees, and costs of suit according to California Labor
16 Code § 226 *et seq.*

SEVENTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

20 50. Plaintiff re-alleges and incorporates by reference all previous
21 paragraphs.

22 51. Defendants have engaged and continue to engage in unfair and/or
23 unlawful business practices in California in violation of California Business and
24 Professions Code § 17200 *et seq.*, by failing to provide all required meal and rest
25 periods or pay premium payments for non-compliant meal and rest periods.

26 52. Defendants' utilization of these unfair and/or unlawful business
27 practices deprived Plaintiff and continues to deprive members of the Classes of

1 compensation to which they are legally entitled, constitutes unfair and/or unlawful
2 competition, and provides an unfair advantage over Defendants' competitors who
3 have been and/or are currently employing workers and attempting to do so in honest
4 compliance with applicable wage and hour laws.

5 53. Because Plaintiff is a victim of Defendants' unfair and/or unlawful
6 conduct alleged herein, Plaintiff for herself and on behalf of the members of the
7 Classes, seeks full restitution of monies, as necessary and according to proof, to
8 restore any and all monies withheld, acquired and/or converted by Defendants
9 pursuant to Business and Professions Code §§ 17203 and 17208.

10 54. The acts complained of herein occurred within the last four years
11 immediately preceding the filing of the Complaint in this action.

12 55. Plaintiff was compelled to retain the services of counsel to file this
13 court action to protect his interests and those of the Classes, to obtain restitution and
14 injunctive relief on behalf of Defendants' current non-exempt employees, and to
15 enforce important rights affecting the public interest. Plaintiff has thereby incurred
16 the financial burden of attorneys' fees and costs, which he is entitled to recover
17 under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

21 56. Plaintiff re-alleges and incorporates by reference all previous
22 paragraphs.

23 57. Defendants have committed several Labor Code violations against
24 Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff is an
25 “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, and acting
26 on behalf of himself and other similarly aggrieved employees, bring this
27 representative action against Defendants to recover the civil penalties due to

1 Plaintiff, other aggrieved employees, and the State of California according to proof
2 pursuant to Labor Code § 558 and § 2699 including, but not limited to: (1) \$100.00
3 for each initial violation for each failure to pay each employee and \$200.00 for each
4 subsequent violation or willful or intentional violation pursuant to Labor Code §
5 210 for each failure to pay each employee, plus 25% of the amount unlawfully
6 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
7 violation pursuant to Labor Code § 558 per employee per pay period, plus an
8 amount sufficient to recover the unpaid wages owed to each aggrieved employee;
9 (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation
10 pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
11 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code
12 § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation
13 and \$200.00 for each subsequent violation per employee per pay period for those
14 violations of the Labor Code for which no civil penalty is specifically provided,
15 based on the following Labor Code violations:

- 16 a. Failing to pay Plaintiff, the Minimum Wage Class, and other
17 aggrieved employees at least the statutory minimum wage for all
18 hours worked, in violation of Labor Code §§ 558, 1182.12, 1194,
19 1194.2, 1197, and 1198;
- 20 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved
21 employees all earned overtime compensation in violation of Labor
22 Code §§ 510, 558, 1194, and 1198;
- 23 c. Failing to pay Plaintiff, the Unlawful Deductions Class, and other
24 aggrieved employees all wages owed at the agreed-upon rate, in
25 violation of Labor Code §§ 221, 222, 223, and 558;
- 26 d. Failing to provide Plaintiff, the Meal Period Class, and other
27 aggrieved employees with their statutorily mandated meal periods

1 and failing to pay meal period premiums in violation of Labor Code
2 §§ 226.7, 512, 558, and 1198;

- 3 e. Failing to authorize and permit Plaintiff, the Rest Period Class, and
4 other aggrieved employees from taking their statutorily mandated
5 rest periods and failing to pay rest period premiums in violation of
6 Labor Code §§ 226.7, 516, 558, and 1198;
7 f. Failing to furnish Plaintiff, the Wage Statement Class, and other
8 aggrieved employees with complete, accurate, itemized wage
9 statements in violation of Labor Code § 226; and

10 Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
11 employees in violation of Labor Code §§ 558 and 1174.

12 58. On July 11, 2018, Plaintiff notified Defendants via certified mail, and
13 the California Labor and Workforce Development Agency (“LWDA”) via its
14 website, of Defendants’ violations of the California Labor Code and Plaintiff’s
15 intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.*
16 with respect to violations of the California Labor Code identified in Paragraph 57
17 (a)-(g). Now that sixty-five days have passed from Plaintiff’s notifying Defendants
18 of these violations, Plaintiff has exhausted his administrative requirements for
19 bringing a claim under the Private Attorneys General Act with respect to these
20 violations.

21 59. Plaintiff was compelled to retain the services of counsel to file this
22 court action to protect his interests and the interests of other similarly aggrieved
23 employees, and to assess and collect the civil penalties owed by Defendants.
24 Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to
25 recover under California Labor Code § 2699.

26 **PRAAYER**

27 WHEREFORE, Plaintiff prays for judgment for himself and for all others on

1 whose behalf this suit is brought against Defendants, as follows:

2 1. For an order certifying the proposed Classes;

3 2. For an order appointing Plaintiff as representative of the Classes;

4 3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;

5 4. Upon the First Cause of Action, for compensatory, consequential,

6 general and special damages according to proof pursuant to Labor Code §§ 510,

7 1194, and 1198;

8 5. Upon the Second Cause of Action, for payment of minimum wages,
9 liquidated damages, and penalties according to proof pursuant to Labor Code §§ 558,
10 1182.12, 1194, 1194.2 and 1197;

11 6. Upon the Third Cause of Action, for recovery of unpaid wages pursuant
12 to Labor Code §§ 221–223;

13 7. Upon the Fourth Cause of Action, for compensatory, consequential,
14 general and special damages according to proof pursuant to Labor Code §§ 226.7,
15 512 and 558;

16 8. Upon the Fifth Cause of Action, for compensatory, consequential,
17 general and special damages according to proof pursuant to Labor Code §§ 226.7,
18 516, and 558;

19 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to
20 Labor Code § 226;

21 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and
22 members of the Class of all money and/or property unlawfully acquired by
23 Defendants by means of any acts or practices declared by this Court to be in violation
24 of Business and Professions Code § 17200 *et seq.*;

25 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff,
26 other aggrieved employees, and the State of California according to proof pursuant
27 to Labor Code § 2699 including, but not limited to: (1) \$100.00 for each initial

1 violation for each failure to pay each employee and \$200.00 for each subsequent
2 violation or willful or intentional violation pursuant to Labor Code § 210 for each
3 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2)
4 \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
5 Labor Code § 558 per employee per pay period, plus an amount sufficient to recover
6 the unpaid wages owed to each aggrieved employee; (3) \$100.00 for each initial
7 violation and \$250.00 for each subsequent violation pursuant to Labor Code §
8 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and
9 \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
10 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00
11 for each subsequent violation per employee per pay period for those violations of
12 the Labor Code for which no civil penalty is specifically provided;

13 12. Prejudgment interest on all due and unpaid wages pursuant to
14 California Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

15 13. On all causes of action, for attorneys' fees and costs as provided by
16 Labor Code §§ 226, 1194, 2699(g), and Code of Civil Procedure § 1021.5; and

17 14. For such other and further relief, the Court may deem just and proper.

18
19 Dated: March 21, 2019

Respectfully submitted,
HAINES LAW GROUP, APC

20
21 By:

22
23 Paul K. Haines
Attorneys for Plaintiff

24
25 ///
26 ///
27 ///

1
DEMAND FOR JURY TRIAL

2 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

3
4 Dated: March 21, 2019

5 Respectfully submitted,
6 HAINES LAW GROUP, APC

7 By:
8

9
10 Paul K. Haines
11 Attorneys for Plaintiff
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27